

UNITED STATES OF AMERICA
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA)	
)	CRIMINAL NO. 04-10288-RWZ
v.)	
)	
CARLOS ESPINOLA, ET AL.,)	
Defendants)	
)	

**Government's Response To Defendant Joseph Allen's
Motion To Sequester Witnesses**

The United States of America, by Michael J. Sullivan, United States Attorney, and Michael J. Pelgro, Assistant U.S. Attorney, hereby files this response to defendant Joseph Allen's motion to sequester witnesses.

The government does not object to sequestration but does request that the Court allow the government to exempt from sequestration its case agent, as required by Fed. R. Evid. 615(2). The First Circuit has ruled that the government's case agent is within the exception to the sequestration rule for a "designated representative" when a party is not a natural person. United States v. Machor, 879 F.2d 945, 953 (1st Cir. 1989).

The practice is permitted as an exception to the rule of exclusion and compares with the situation defense counsel finds himself in - he always has the client with him to consult during the trial. The investigative agent's presence may be extremely important to government counsel, especially when the case is complex or involves some specialized subject matter. The agent, too, having lived with the case for a long time, may be able to assist in meeting trial surprises where the best-prepared counsel would otherwise have difficulty.

Id. (quoting Sen. Rep. No. 93-1277 as quoted in 10 *Moore's Federal Practice* 2d § 615.01[2] 1988)). For this reason, the Machor court ruled that this exception in the rule "has severely curtailed the discretion of the trial court to sequester the government's case agent." Id. The case-agent exception to the rule of sequestration is widely recognized by the other circuits as well. *E.g.*, United States v. Parodi, 703 F.2d 768, 773-75 (4th Cir. 1983)(collecting cases).

The government, therefore, respectfully requests that the Court sequester witnesses except for the government's case agent.

Respectfully submitted,

MICHAEL J. SULLIVAN
United States Attorney

By: /s/Michael J. Pelgro
Michael J. Pelgro
Assistant U.S. Attorney

DATED: May 5, 2006.

CERTIFICATE OF SERVICE

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and that a paper copy will be sent to those indicated as non registered participants.

/s/Michael J. Pelgro
Michael J. Pelgro
Assistant United States Attorney

Date: May 5, 2006.